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Three Sessions of Legislating Humanitarian Law: Forward March, Retreat, or Parade Rest?†

In 1974 the Geneva Diplomatic Conference on the Re-affirmation and Development of Humanitarian Law began efforts to add two Protocols to the four Geneva Conventions of 12 August 1949. (This had been preceded by a series of preparatory meetings sponsored by the International Committee of the Red Cross in the late 1960s and early 1970s.)[1] After the third session of the Conference in 1976, the two draft Protocols were still under negotiation. A fourth and hopefully final session will run from Easter, 1977, to mid-June. Rumour has it that the Swiss government, which funds these Conferences as the depository for the Geneva Law on war victims, has some reservations about additional cost burdens—the third session alone is said to have directly cost that government in the neighborhood of ten million Swiss francs—excluding the delegates' salary, travel and support.

Having endured three extensive sessions of negotiations, it is fair to inquire whether the participants are getting their money's worth. Much of each draft Protocol has been tentatively approved—*viz.*, adopted in committee. One can thus explore what has been achieved so far, and what is likely to be the basic nature of the final product of this Conference—the first of its kind in at least twenty-five years. Is the Conference moving forward or backward, or not moving at all? And what does "movement" mean in relation to legislating the humanitarian law of armed conflict?

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[1]The International Committee of the Red Cross (ICRC) presented proposals to the Diplomatic Conference after hosting the meetings of experts. *See* ICRC, DRAFT ADDITIONAL PROTOCOLS: COMMENTARY (1973). For further background, *see especially* G. Schwarzenberger, *From the Laws of War to the Laws of Armed Conflict*, 17 J. OF PUB. L. 61-77 (1968); and G.I.A.D. Draper, *Ethical and Juridical Status of Constraints in War*, 55 MIL. L. REV. 169-85 (1972).

What follows is an attempt to provide a brief answer to such questions, and in so doing to focus upon the final session; it is in no sense an exhaustive review of the draft Protocols in detail.

Possible Backward Movement

An observer who follows the proceedings of the Conference—who interviews delegates and tries to produce a balance sheet of that meeting—faces a bewildering array of opinions. For every positive or negative view encountered, there seems to be a countervailing attitude. Perhaps this is to be expected in a Conference of some 130 states, of three major political groupings, crosscut by a half-dozen regional or ethnic groups, themselves split by various legal, political, economic or philosophical tendencies. At least it does permit one to examine certain hypotheses from differing points of view. From this approach, four possible major problems can be identified, after the three legislative sessions.

1. *Legal Complexity and Unclear Language*

There is no doubt about the law being complex, when and if approved by the Conference. The first Protocol, additional to all four Geneva Conventions of 1949 and pertaining to international armed conflict, has created a new category of international war. Because of the interests of the Third World, supported by the Socialists, international armed conflict has been defined to include "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination. . . ." Therefore, in addition to the traditional category of international war defined by a geo-military scale of violence reached only by states, we will have international wars of self-determination—whatever the geo-military scale and whatever the nature of the actors.[2]

This trend toward creating new categories of armed conflict in international law permeates the second Protocol as well, for precisely opposite reasons on the part of the Third World, somewhat reluctantly supported by the Socialists. The second Protocol pertaining to internal war has been defined so as *not* to cover the same ground as Common Article 3 of 1949, legally speaking. The Third World did not want a second Protocol that would cover *all* internal wars, only those of some intensity. While the Third World sought to extend international legal regulation to wars of self-determination, it wanted to restrict specific legal regulation of internal wars to the upper end of the scale of violence.

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[2]The subject is given detailed examination in D. Forsythe, *The 1974 Diplomatic Conference on Humanitarian Law: Some Observations*, 69 AJIL 77-91 (1975). *Cf.* R.R. Baxter, *Humanitarian Law or Humanitarian Politics: The 1974 Diplomatic Conference on Humanitarian Law*, 16 HARV. INT'L L.J. 1 (1975).

The combined effect of the two Protocols is to double the categories of armed conflict from two to four: 1) traditional international armed conflict; 2) wars of self-determination; 3) internal wars in which "dissident armed forces or other organized armed groups, . . . under responsible command, exercise such control over a part of [the] territory as to enable them to carry out sustained and concerted military operations and to implement the [second] Protocol"; 4) all other non-international armed conflicts.[3]

Moreover, the relationship of the two Protocols to the 1949 code of law is less than perfectly clear, for the Protocols supplement but do not erase—necessarily—the content of the 1949 law. Some of the articles in the Protocols state that the corresponding article in the Conventions remains unaltered. Yet the new wording is not always the same as the old, even on the same subject.[4]

Furthermore, the four Conventions plus the two Protocols total over 600 articles, with some of the individual articles being extremely long and complex.[5] Inevitably, the decision-makers, judicial or otherwise, can be expected to have some difficulty in interpreting the emerging law—to say nothing of the problems confronting military personnel who must implement most of the law.

This, however, is not the only attitude shared. It is said the law of war was already complicated, and that this Conference merely accentuated already existing trends of legalism. Some observers even hold that the 1970s version of complexity is an improvement over, say, the 1907 rules of aerial bombardment—hardly the classic example of legal simplicity. On the other hand it can be said that the current Conference has done nothing to correct past trends toward excessive detail and legal hairsplitting that is without relevance to armed conflicts in the real world.

Perhaps, in the view of some, legal complexity is necessary for reaching compromises in a fragmented political world. But there is also the feeling that some parts of the law represent only propaganda and symbolic concerns. It is said by some Western delegates that the section of Protocol I on wars of self-determination will never be invoked in actual violence—or at least not mutually invoked. According to this view, that part of Protocol I is only a propaganda victory for the anti-colonialists who are whipping a dead horse. Hence the law as applied will be less complex than the law on the books—or so it is argued.

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[3]Governmental delegates who had negotiated the draft articles seemed confused on the number of categories of armed conflict they had created, as reflected in 1976 debates. *See* Conference Document CDDH/I/SR.23 at 2-9.

[4]A number of new articles state that they do not "modify" the 1949 law, then proceed to state new norms in different language for old subjects. It is not clear to this observer which version will be controlling on a state that is party to both the 1949 and 1977 laws.

[5]The situation is well analyzed in Baxter, *Some Existing Problems of Humanitarian Law*, LA NOTION DE CONFLIT ARMÉ INTERNATIONAL: NOUVELLES PERSPECTIVES (1974).

Finally, it can be recalled that since much of humanitarian law is never adjudicated, the solution to past violations and deficiencies is to enact more—and complicated—law. While for some, this point may help to explain the complexity of the law, it does little to alleviate problems of interpretation and implementation.

The evaluation of this complexity is itself not free from questions.

2. *Lack of Control Mechanisms*

Despite the complexity and unclear language of past and emerging humanitarian law, the Protocols create no mechanism to issue an authoritative ruling on claims arising from that law. International legal processes have long shown a certain inadequacy in defining wars of self-determination, traditional international war, and internal war. Certainly there is no provision in the Protocols, adopted or submitted, which allows a participant to rule authoritatively on the initial applicability of any part of humanitarian law.

The Protecting Power System under Protocol I comes into play only after the combatting parties themselves have reached a (not always common) judgment concerning what law applies.[6] Even the Protecting Power's role in seeing that the law is implemented, after a belligerent's judgment on applicability, represents a backward step from the 1949 law. Under the 1949 drafting, an organization like the ICRC could present itself to belligerents as a substitute for the Protecting Power if such a party had not been appointed; and in that situation belligerents were obligated to accept such an offer. As of 1975, this right of access for a would-be automatic substitute for the Protecting Power was made dependent upon ad hoc consent by the belligerent.

On the other hand, in 1975 the Conference strengthened the procedure by which Protecting Powers or their state-appointed substitutes were appointed. A provision was adopted which had the effect of exerting pressure on a belligerent to appoint a Protecting Power. But the process remains subject to mutual consent by the belligerents. The rights of the Red Cross and other "impartial and efficacious" parties were slightly strengthened. But, in general, Protocol I makes only very slight improvements over the weak de jure and de facto supervisory mechanisms extant from 1949—improvements accompanied by some setbacks.

With respect to the impact of Protocol II on internal war, the 1949 right of the combatants to call upon an impartial and effective body such as the ICRC to help in implementing the Protocol, was *not* reaffirmed; and it was only after extended debate and maneuvering that the right of the ICRC to offer its services

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[6]*See further* D. Forsythe, *Who Guards the Guardians: Third Parties and the Law of Armed Conflict*, 70 AJIL 41 (1976).

was adopted in Committee by a two-to-one vote (but not two-thirds). India and Iraq have served notice that they will continue the fight to remove the entire article on "Cooperation in the Implementation of the Protocol," which demonstrates graphically the depth of desire of some Third World states to leave Protocol II's implementation almost totally to the discretion of the parties to the conflict.

Yet this criticism quickly runs up against the view that authoritative control mechanisms in Protocol I are simply unrealistic in the current world. And under Protocol II, visits by an impartial humanitarian body to persons detained by reason of the conflict are almost required and certainly expected (". . . the parties . . . shall endeavour to facilitate visits. . . ."). This is a clear progressive development over the 1949 law, which was silent on detention visits, save for inferences derived from Common Article 3.[7]

A further general subject to be negotiated in 1977 is the matter of an Inquiry Commission under Protocol I (proposed by Denmark, Norway, Sweden, and New Zealand) and an Enforcement Commission (proposed by Pakistan). This matter possibly could make a large difference in how one evaluates control procedures produced by the Conference, although it is unlikely.

Despite the fact that the greatest number of delegations speaking in Committee I's general debate on this subject were in favor of some form of one or the other of these proposals, the prospects are not encouraging. The Socialist group was opposed to a change in the 1949 law, which subjects inquiries into violations on ad hoc state consent. The United States and United Kingdom statements were—to be charitable—vaguely cautious, while the Swiss statement was explicitly reserved. No matter how large the number of states favorable to the idea of inquiries and/or enforcements, if the United States and the Soviet Union are not favorably disposed, there will be no general legal development. (And quaere, whether Pakistan has thought not merely of India but also of Pakistan; or whether Syrian support will exist in 1977 when Syria reflects not just on Israel but on Syria's position in Lebanon.)[8]

The Socialist group will certainly never accept compulsory inquiry, much less compulsory enforcement. Its views toward defending claims of national

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[7]On efforts of the ICRC to supervise the implementation of Common Article 3, *see* M. Veuthey, *Les Conflits Armés de Caractère Non International et le Droit Humanitaire,* CURRENT PROBLEMS OF INT'L LAW (1975); and JAMES E. BOND, THE RULES OF RIOT (1974). The present author has analyzed recent Conference events in *Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflict,* mimeo, 35 pp.

[8]The four-power proposal is found in CDDH/I/241/Add.1. It was amended by Japan in CDDH/I/316. It can be compared with the Pakistani proposal in CDDH/I/267. According to this author's tally at the 1976 session, twenty-four delegates spoke in favor of an inquiry and/or enforcement commission, five seemed ambivalent in their comments, and nine (eight Socialists plus an Indian) were clearly opposed.

sovereignty are well known and were demonstrated in 1975 by unyielding opposition to the idea of automatic substitutes for Protecting Powers. If there is to be any legal development on the subject of an Inquiry Commission, it will be left to the United States and its allies to cooperate in the drafting of an optional mechanism which the parties can accept or not *à la* the European Human Rights Convention and its optional protocols on implementing that Convention. Indeed, one wonders why optional protocols have not been used before in the law of armed conflict. As the law now exists, parties append reservations, which means the law is not the same for all parties anyway. And proceeding on universal consensus means the law always reflects the lowest common denominator—*viz.*, the law tends to reflect the least progressive views.

Recent research shows that inquiry commissions have not worked well in world affairs in general, not just under the laws of war.[9] But at least the optional protocol (or optional article) approach means that when and if states sign on, the law might actually impose important obligations.

It is clear Protocol II will not have any significant machinery for de jure supervision.

3. *Scope of Protocol II*

It is said that the reduced scope of Protocol II, and specifically its not being coterminous with Common Article 3 of 1949, reduces the importance of the Protocol to the point of extinction—especially since the greater the intensity of internal war, the more likely the parties are to profess adherence to the principles of the entire complex of 1949 Conventions (as occurred in the Congo and Nigeria, for example).

But it is also the judgment of some that the material field of application of Protocol II is not as narrow as certain Western delegates have assumed.[10] Some delegates feel that a rather large number of violent situations logically fall under that Protocol. Territory does not have to be held continuously by dissident forces, and it would not require very much for the dissidents to show a good

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[9]*See* NISSIM BAR-YAACOV, THE HANDLING OF INTERNATIONAL DISPUTES BY MEANS OF INQUIRY (1974).

[10]Article 1 of Protocol II reads:

> The present Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by article 1 of Protocol 1 and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement the present Protocol.
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> The present Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

faith effort to apply the Protocol. Thus, if dissidents intermittently controlled territory and opened controlled hospitals and detention centers to the ICRC, a government might feel constrained to apply the Protocol.

Nevertheless, the Protocol's different scope of application, by contrast to Common Article 3's undefined but broader reach, provides governments room to maneuver should they seek to avoid applying the Protocol—an all too likely possibility.

4. *No Agreements on Weapons*

The Conference has also been seized of the question of weapons that may cause unnecessary suffering or have indiscriminate effects.[11] The Swedish initiative, pursued with determination and now pressed by some dozen states, has yet to produce any draft articles reflecting agreement which could serve as a starting point for Protocol III. The Soviet Union has been the most vocal in opposing the Swedish proposal. Elements on the military side of the American delegation could hardly be unhappy with this development. For the Soviets appear as the "bad guys," and in the process the United States is relieved of the need to take a stand on napalm, booby traps, small calibre projectiles, dart weapons, plastic weapons and the like.

So far the Pentagon appears unmoved by the Swedish and Swiss willingness to give up napalm completely—a weapon which both possess. While some limited agreements yet may be reached regarding uses of "booby traps" or other weapons, three years of negotiations have not produced significant agreement. Holland and Norway, among NATO and Warsaw Pact countries, have placed some specific proposals on the table regarding limitations on the uses of certain weapons. But most NATO and Warsaw Pact countries seem decidedly unenthusiastic about negotiating "the weapons question." There is general consensus, articulated by Mexico at the 1976 plenary session, that results on this aspect of the Conference have been extremely disappointing. The outlook is for more of the same.

Possible Forward Movement

1. *Civilian Protection*

If there is consensus that "the weapons question" is the least positive aspect of the Geneva Diplomatic Conference, there may also be consensus that the most positive aspect is the effort to protect civilians in an international armed

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[11] *See* ICRC, CONFERENCE OF GOVERNMENT EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS (1976); Hans Blix, *Current Efforts To Prohibit the Use of Certain Conventional Weapons*, IV INSTANT RESEARCH ON PEACE AND VIOLENCE 21-31 (1974); and ESBJORN ROSENBLAD, PROHIBITED WEAPONS—TREATIES AND BIBLIOGRAPHY (1974).

conflict. There is a widespread belief that the emerging law on this subject is both a considerable development beyond the comparable provisions in the 1949 law (and the 1907 Hague Rules) and is capable of being implemented in a practicable way. As examples, delegates are prone to cite several articles in the first Protocol. Article 46 prohibits attacks on the "civilian population as such" and "methods intended to spread terror among the civilian population"; indiscriminate and disproportionate attacks on civilian population and goods, even though legitimate military objectives may be in the area; and reprisals against civilians. Article 48 states that it "is forbidden to attack or destroy objects indispensable to the survival of the civilian population. . . ." Article 52 prohibits attacks on "non-defended localities." Other articles have been tentatively adopted which pertain to civilian protection. Provisions on civilian relief—e.g., the right of humanitarian assistance to enter a conflict area expeditiously—will be negotiated in 1977. Certain legal problems remain, as in the past, such as the precise meaning of an attack inflicting disproportionate damage to civilian population and goods in the light of legitimate military necessity. But whatever law eventually exists on the books will clearly reflect a general desire to increase the protection due to civilians.

2. *Medical Law*

Widespread agreement prevails that the Conference has made whatever technical adjustments are necessary to adapt the medical portions of the 1949 Geneva Conventions to modern international warfare. Committee II made rapid and extensive progress, particularly in the multi-dimensional subject of facilitating the operation of medical aircraft in battle areas. Virtually the only criticism one hears of the work of that Committee is that its progress is almost entirely technical in nature and that its draft articles are ultimately dependent for their implementation on articles drafted in other Committees. Nevertheless, medical law in future international armed conflicts would seem to specify what be done by whom, i.e., under what conditions can a belligerent compel medical aircraft to land and be searched, and what can that belligerent do if the aircraft has, or has not, observed the rules.

3. *Protocol II, in the Large*

Despite the possibly pessimistic view that the restricted scope of the second Protocol on internal war, compared to both Common Article 3 and what the ICRC proposed to the Conference, makes that Protocol relatively insignificant, the Protocol is believed to be important. Aside from whether its scope will be defined more broadly than the pessimists predict, some delegates believe the instrument has symbolic importance. Not to approve it could be seen as a concession to those Third World states like India and Iraq most opposed to further development of international law for internal wars. Not to develop more

specific law for non-international armed conflict, even if only for internal wars of high intensity, could serve to arrest further legal developments in this area. To abandon the Protocol could be seen as support for the double standard so unabashedly articulated by India in the 1976 plenary. In India's view, Common Article 3 from 1949 is only for colonial situations, not for internal wars in the developing nations (which, incidentally, is contrary to what India argued in 1974—i.e., heretofore, internal wars in colonial situations were international wars, an argument logically leaving Common Article 3 to regulate all other internal wars including those in developing nations).

Whatever the scope of Protocol II when authoritatively interpreted, some delegates believe that instrument constitutes a positive development. The Protocol is said to have long-range significance for future legislative efforts, despite the probability that many Third World states will not bring it into legal force and effect.

4. *Penal Law*

Committee I has reached agreement on what constitutes "grave breaches" of humanitarian law requiring individual punishment. This development is of considerable practical importance. It advances the historical trend of incorporating criminal justice into the humanitarian objectives pursued at Geneva since 1949. In fact, justice can now legally replace charity. And, legal developments refine the concept of individual responsibility for certain crimes of war (a subject to be dealt with more directly in certain articles still being negotiated).[12]

Some delegates find it encouraging that the Conference has tentatively described what constitutes the grave breaches mentioned more generally in the 1949 Code.[13] One category of grave breaches is non-controversial and compromises such delicts as: knowingly attacking a person who is *hors de combat,* attacking "works or installations containing dangerous forces (e.g., dams, dikes) with the knowledge that such attack will cause excessive loss of life," attacking DMZs, making "perfidious use" of the Red Cross and other "protective" signs, and so on.

A second category encompasses: engaging in the forced movement of certain persons by an occupying power, attacking certain cultural property, engaging in "unjustifiable delay" in repatriating prisoners of war, depriving a protected person of the right to a "fair and regular trial," and more controversial (for both

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[12]The trend in Conference debates is to emphasize legal responsibility for superior rather than subordinate officers, without completely removing individual responsibility for each member of a military establishment.

[13]*See* CDDH/I/332 and CDDH/I/326.

its irrelevance and its political overtones), practicing apartheid and certain other forms of racial discrimination.

Beyond the controversy over this second category of grave breaches—breaches which do not necessarily involve loss of life or major damage to human health—some reservations are held concerning the entire process of emphasizing penal law in humanitarian instruments. Apprehensions have been voiced that the Communist camp or others would prosecute foreign detainees and in so doing terminate humanitarian legal protection upon convictions—based upon less protective national standards. Indeed, Communist nations had already qualified their obligations under parts of the 1949 Conventions by a reservation in this vein, i.e., the protection of the Third Convention ceases when a prisoner of war is convicted of a war crime, as decided by national courts.[14]

Nevertheless, many consider the consensus adoption of Article 74 of Protocol I on grave breaches to be a positive step in general, indicating the strength of the commitment to enforce certain prohibitions of humanitarian law.

5. *Prisoner of War Protection*

Finally, while a definition of the term "prisoner of war" has not yet been approved, one version has attracted considerable support. Its approval in some form is likely very early in the fourth session. This informal consensus is regarded by many as a favorable development—especially since the Americans and North Vietnamese (among others) seem to be in agreement.

A working group has proposed a definition of a prisoner of war which implicitly utilizes the "separate but equal" concept.[15] Certain combatant detainees would be prisoners of war in the full legal sense—e.g., those combatants in international armed conflict displaying arms openly "during each military engagement" and preceding attack when deploying and "visible to the adversary." Other detained combatants, failing to meet the rules on open weapons, forfeit prisoner of war status, but are to be "given protection equivalent in all respects to prisoners of war."

If this draft article 42 of Protocol I is adopted, it will basically formalize practices in South Vietnam and Algeria, *inter alia,* where not only traditionally attired soldiers were given de facto prisoner of war status, but also many irregular fighters captured in combat. Even this act of formalizing some past practice was difficult to achieve. But the subject of protection of mercenaries is still characterized by much disagreement; it is a subject that may have to be treated in an article separate from the main prisoner of war article in order to

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[14] *See* CLAUDE PILLOUD, RESERVATIONS TO THE GENEVA CONVENTIONS OF 1949 (1976) at 27-34.
[15] CDDH/III/362.

preserve the consensus already obtained.[16] Still, informal Conference developments through 1976 have updated the old Hague and Geneva rules requiring combatants to wear uniforms and carry their arms openly at all times, *inter alia.* The law has been adjusted—to some extent—to contemporary events.

Summary

Were one to summarize the results of the three conference sessions thus far, one could discern some positive, forward steps, while possible backward steps or steps characterized by marking time are subject to varying interpretations. Thus it is said that the good things are really good, and the bad things are open to question and may turn out to be negligible in importance. Civilian protection and medical law are said to be clear steps forward; the complexity of the law in general and the reduced scope of Protocol II are said to be not so injurious to applied humanitarian protection and assistance—or at least not definitely injurious at this point.

This view notwithstanding, it is difficult to formulate in satisfactory form a summary of the three sessions of the Conference, in part because different parties wanted and expected different things from the Conference. Whether a step is forward or backward depends on the vantage point of the viewer. Many Third World states sought to confer belligerent status on wars of self-determination against colonialism, and on guerrilla fighters. This they obtained. Many Socialist states jealously wanted to preserve claims of national sovereignty—viz., to block authoritative supervision of the implementation of the law—and to emphasize penal law. This they achieved. Many Western states wanted a second Protocol on internal war, and to "educate" newer states in the law of armed conflict. To some extent they were successful in this. The ICRC wanted to improve civilian protection and also to "educate" non-Western parties in the law. The first was clearly obtained. The second objective was—as for the West, too—only a limited success. Many African and Asian states did not participate daily in the Conference because of lack of staffing, if not lack of interest. And it may have been the ICRC and the Western states that received the most "education" from the first three sessions of the Conference—through learning how the law would have to be shaped by the voting strength and political preoccupations of the Third World, supported by the Socialists. Still, most parties "gained" a considerable amount of what they wanted out of the Conference.[17] (Each of the three major groupings did, of course, lose on some items they urged.)

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[16]A summary of competing views is found in CDDH/III/361/Add.1.

[17]For example, the United States lobbied vigorously—and successfully—for a new article on *Information on the Victims of a Conflict and Remains of Deceased. See* CDDH/II/395 for this rule on Missing-In-Action (MIAs) and related subjects.

If, however, one asks not whether states got what they wanted out of the Conference, but whether future victims of armed conflicts should be noticeably better off after this Conference, one cannot be certain that will be so. *If* the law on the books is implemented, civilians clearly stand a better chance of avoiding some of the horrors of war and injured combatants a better chance of rapid evacuation. But on the crucial question of authoritative determination of applicability and implementation of the law, there were virtually no progressive developments—and sometimes not even a simple reaffirmation, as on the subjects of automatic substitutes for Protecting Powers and the role of the ICRC in relation to internal war. It is not only the "what" but also the "who" that counts in international law; and on the subject of who resolves competing claims the Conference has accomplished virtually nothing.

If, therefore, one ignores the crucial questions of who decides when the law applies and who supervises the implementation of the law, the Conference seems to have taken a number of steps forward. When one adds to the summary equation questions about application and implementation—not to mention the weapons question—the Conference appears to be going nowhere. Certainly the Conference is not going backward. (Some Western delegations thought so after the 1974 session, but these delegations have come to live with—but not really accept—the idea that wars of self-determination are *ipso facto* international armed conflicts.)

Because, in sum, there has been some slight forward movement on civilian and combatant protection, medical law, and law for internal war, the Conference is likely at its fourth session to produce two instruments which should be signed and ratified. Perhaps the most cogent reason for improving the law of armed conflict in a slight forward step is that, at the next Diplomatic Conference on the subject, one can approach the really fundamental questions of application and supervision—questions on which, as already noted, this Conference has basically stood still.